IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 64 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJPUT BABAJI RAYDHANJI
Versus
STATE OF GUJARAT & ORS

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Appearance :
MR ASIM PANDYA for HL PATEL ADVOCATES for Appellant
MR SS PATEL APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 11/10/2006

ORAL JUDGMENT

1 Heard learned Advocate Mr. Asim Pandya for the appellant, learned APP Mr. S.S. Patel for respondent State and learned Advocate Mr. R.J. Goswami for the injured Rameshkumar

Babuji Rajput.

2 This Appeal is preferred by appellant – original accused No. 1 under Section 374 (2) of the Code of Criminal Procedure and is directed against the judgment and order dated 31st of December , 2005, delivered by learned Additional Sessions Judge and Presiding Officer, 5th Fast Track Court, Mehsana, in Sessions Case No. 195 of 2005, whereby the present appellant - original accused No. 1 came to be convicted for the offence punishable under Section 307 of the Indian Penal Code and was sentenced to undergo seven years rigorous imprisonment and to pay fine of Rs. 2,000/- in default to undergo simple imprisonment of two months. While other three accused of the said Sessions Case came to be acquitted by learned Additional Sessions Judge. Appeal came to be admitted by this Court on 3rd of March, 2006, but the appellant was not released on bail during pendency of the Appeal and he is undergoing sentence as imposed upon him. The appellant has paid the amount of fine of Rs. 2,000/- before the Trial Court.

2 It appears that the incident in question occurred on 29th of August, 2005 at 8.45 p.m. at Mehsana, in which it is alleged that the present appellant and his family members were quarreling with the brother of the complainant Rameshkumar Babujai Rajput, and present appellant, his wife and daughter lashed with dharia, sword and pipe, speaking abuses, quarreled with Dineshkumar, and

appellant aimed dharia blow upon Dineshkumar but injured Rameshkumar intervened and hence the said dharia blow landed on back of the head of Dineshkumar. Complaint came to be registered and Sessions Case as aforesaid proceeded and ultimately resulted in conviction of the appellant as aforesaid. It appears that for the same incident, present appellant also gave a cross complaint against the present complainant party, wherein there were four accused and Sessions Case No. 219 of 2005 for the offences punishable under Sections 323, 325, 504 and 114 of the Indian Penal Code was proceeded against four accused including injured in this case Rameshkumar Babuji Rajput. In said case also, two accused came to be convicted for the offences punishable under Sections 325, 323 to read with Section 114 of the Indian Penal Code, for which both the accused preferred Criminal Appeal No. 465 of 2006, which is admitted by this Court by order dated 10th of March, 2006 and the said Appeal is also pending.

3 Learned Advocate for the appellant Mr. Asim Pandya places on record a compromise entered between the parties, signed by Hansaben Babaji Rajput, wife of the appellant and injured Rameshkumar Babuji Rajput and witnesses. The parties are identified by learned Advocate for the appellant, and except appellant, since he is in jail, other parties are present in the Court. The said agreement of compromise as submitted by learned Advocate for the appellant is taken on record. It is also submitted

that in other Criminal Appeal No. 465 of 2006, arising out of Cross Sessions Case No. 219 of 2005, parties have compromised and necessary agreement for compounding of offences is also submitted in Criminal Appeal No. 465 of 2006.

4 In respect of this Appeal and changed circumstances by which the parties have compromised both Sessions Cases, learned Advocate Mr. Pandya for the appellant contended that under Section 320 of the Code of Criminal Procedure, though the offence punishable under Section 307 of the Indian Penal Code is not compoundable, but having regard to the compromise arrived at between the parties, the Appeal is not pressed on merits and the compromise arrived at between the parties be taken into consideration so far as the quantum of punishment is concerned. Learned APP Mr. S.S. Patel was heard in respect of this only submission made by learned Advocate for the appellant.

5 From the record, it is is found that the present appellant was on bail during trial and was taken into custody on pronouncement of judgment impugned on 31st of December, 2005. Meaning thereby that, till now he has undergone imprisonment of more than nine months. True that, the offence for which the appellant is convicted is not compoundable, but when the parties have entered into compromise and details of which are narrated in the compromise for compounding the offence, this Court may

certainly consider the quantum of punishment and the compromise arrived at between the parties is good ground for reduction of sentence imposed upon the appellant. It appears that reduction of sentence of the appellant, the relationship between the parties would be more smooth in the future and reducing the quantum of sentence would also help in maintaining peace and harmony between the parties. This Appeal, therefore, is required to be decided finally by partly allowing to the extent of reduction of sentence.

6 In view of above, this Appeal is partly allowed to the extent of reduction and modification of sentence imposed upon the appellant and while maintaining the conviction for the offence punishable under Section 307 of the Indian Penal Code, the sentence imposed upon the appellant by the Trial Court for rigorous imprisonment of seven years and to pay fine of Rs. 2,000/- is modified and reduced to the sentence the appellant has already undergone till today. The rest of the Appeal, except above modification and reduction in sentence, stands dismissed. The orders passed by the Trial Court in respect of muddamal, etc. is not interfered with. It is further directed that the appellant be set at liberty forthwith if he is not required to be detained in jail for any other purpose. It is also directed that the

amount of fine of Rs. 2,000/- paid by the appellant in Trial Court be refunded to him by the Trial Court.

7 Office is directed to transmit the Writ of the operative order forthwith to the Jail Authority, Sabarmati Central Jail, Ahmedabad as the appellant at present is in Sabarmati Central Jail. DS permitted today.

(J. R. VORA, J.)

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